

Office Action Summary	Application No.	Applicant(s)
	10/080,140	DE ET AL.
	Examiner Robert W. Wilson	Art Unit 2661

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1) Responsive to communication(s) filed on 21 February 2002.

2a) This action is FINAL. 2b) This action is non-final.

3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4) Claim(s) 1-12 is/are pending in the application.

4a) Of the above claim(s) _____ is/are withdrawn from consideration.

5) Claim(s) _____ is/are allowed.

6) Claim(s) 1-12 is/are rejected.

7) Claim(s) _____ is/are objected to.

8) Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

9) The specification is objected to by the Examiner.

10) The drawing(s) filed on _____ is/are: a) accepted or b) objected to by the Examiner.

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

a) All b) Some * c) None of:

1. Certified copies of the priority documents have been received.
2. Certified copies of the priority documents have been received in Application No. _____.
3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.



PHIRIN SAM
PRIMARY EXAMINER

Attachment(s)

1) Notice of References Cited (PTO-892)

2) Notice of Draftsperson's Patent Drawing Review (PTO-948)

3) Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date 5/23/02 8/19/02, 1/30/03, 4/22/05

4) Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____

5) Notice of Informal Patent Application (PTO-152)

6) Other: _____

Drawings

1. The drawings are objected to because Figure 1 has element numbers but does not have element names. The examiner recommends adding element names to Figure 1. Corrected drawing sheets in compliance with 37 CFR 1.121(d) are required in reply to the Office action to avoid abandonment of the application. Any amended replacement drawing sheet should include all of the figures appearing on the immediate prior version of the sheet, even if only one figure is being amended. The figure or figure number of an amended drawing should not be labeled as "amended." If a drawing figure is to be canceled, the appropriate figure must be removed from the replacement sheet, and where necessary, the remaining figures must be renumbered and appropriate changes made to the brief description of the several views of the drawings for consistency. Additional replacement sheets may be necessary to show the renumbering of the remaining figures. Each drawing sheet submitted after the filing date of an application must be labeled in the top margin as either "Replacement Sheet" or "New Sheet" pursuant to 37 CFR 1.121(d). If the changes are not accepted by the examiner, the applicant will be notified and informed of any required corrective action in the next Office action. The objection to the drawings will not be held in abeyance.

Double Patenting

2. The nonstatutory double patenting rejection is based on a judicially created doctrine grounded in public policy (a policy reflected in the statute) so as to prevent the unjustified or improper timewise extension of the "right to exclude" granted by a patent and to prevent possible harassment by multiple assignees. A nonstatutory obviousness-type double patenting rejection is appropriate where the conflicting claims are not identical, but at least one examined application claim is not patentably distinct from the reference claim(s) because the examined application claim is either anticipated by, or would have been obvious over, the reference claim(s). See, e.g., *In re Berg*, 140 F.3d 1428, 46 USPQ2d 1226 (Fed. Cir. 1998); *In re Goodman*, 11 F.3d 1046, 29 USPQ2d 2010 (Fed. Cir. 1993); *In re Longi*, 759 F.2d 887, 225 USPQ 645 (Fed. Cir. 1985); *In re*

Van Ornum, 686 F.2d 937, 214 USPQ 761 (CCPA 1982); In re Vogel, 422 F.2d 438, 164 USPQ 619 (CCPA 1970); and In re Thorington, 418 F.2d 528, 163 USPQ 644 (CCPA 1969).

A timely filed terminal disclaimer in compliance with 37 CFR 1.321(c) or 1.321(d) may be used to overcome an actual or provisional rejection based on a nonstatutory double patenting ground provided the conflicting application or patent either is shown to be commonly owned with this application, or claims an invention made as a result of activities undertaken within the scope of a joint research agreement.

Effective January 1, 1994, a registered attorney or agent of record may sign a terminal disclaimer. A terminal disclaimer signed by the assignee must fully comply with 37 CFR 3.73(b).

3. Claims 1-12 are provisionally rejected on the ground of nonstatutory obviousness-type double patenting as being unpatentable over claims 20-37 of copending Application No. 10/052,943. Although the conflicting claims are not identical, they are not patentably distinct from each other because:

Referring to claim 1 of application 10/080,140, claims 20 & 26 of 10/052,943 teach: a method for receiving as well as a receiver with means. Application 10/052,943 does not expressly call for user equipment for receiving. It would have been obvious to one of ordinary skill in the art at the time of the invention to implement the method for receiving in a user equipment with a because a method requires device in order to receive and a receiver requires a user in order to be used. It would have been obvious to one of ordinary skill in the art at the time of the invention to implement CDMA user receiver based upon a receiver with means is a part of an apparatus which is within a receiver.

In Addition:

Referring to claim 2 of application 10/080,140; the limitations are taught by claims 21 & 27 of application 10/052,943

Referring to claim 3 of application 10/080,140, the limitations are taught by claims 22 & 28 of application 10/052,943

Referring to claim 4 of application 10/080,140, the limitations are taught by claims 23 & 29 of application 10/052,943.

Referring to claim 5 of application 10/080,140, the limitations are taught by claims 24 & 30 of application 10/052,943.

Referring to claim 6 of application 10/080,140, the limitations are taught by claims 25 & 31 of application 10/052,943.

Referring to claim 7 of application 10/080,140, claim 32 of 10/052,943 teaches: CDMA receiver for receiving. Application 10/052,943 does not expressly call for: CDMA user equipment for receiving. It would have been obvious to one of ordinary skill in the art at the time of the invention to implement CDMA user equipment for receiving base upon a CDMA receiver for receiving because user is required in order to use a receiver. .

In Addition:

Referring to claim 8 of application 10/080,140, the limitations are taught by claim 33 of application 10/052,943

Referring to claim 9 of application 10/080,140, the limitations are taught by claim 34 of application 10/052,943.

Referring to claim 10 of application 10/080,140, the limitations are taught by claim 35 of application 10/052,943.

Referring to claim 11 of application 10/080,140, the limitations are taught by claim 36 of application 10/052,943.

Referring to claim 12 of application 10/080,140, the limitations are taught by claim 37 of application 10/052,943.

This is a provisional obviousness-type double patenting rejection because the conflicting claims have not in fact been patented.

Conclusion

3. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Robert W. Wilson whose telephone number is 571/272-3075.

The examiner can normally be reached on M-F (8:00-4:30).

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Chau T. Nguyen can be reached on 571/272-3126. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).


Robert W. Wilson
Examiner
Art Unit 2661

RWW
2/2/31


PHIRIN SAM
PRIMARY EXAMINER